

JAMES D. ROSS  
MARIA J. ROSS

IBLA 83-341

Decided May 5, 1983

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. CA MC 33527 and CA MC 33528.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Claim--Mining Claims: Recordation

Mining

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute

itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Administrative Procedure: Adjudication--Evidence: Generally-- Evidence: Presumptions--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and that he in fact did so, in enacting the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), Congress specifically placed the burden on the claimant to show, by his compliance with the Act's requirements, that the claim has not been abandoned and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

4. Administrative Authority: Generally--Constitutional Law: Generally--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

The Department of the Interior, as an agency of the executive branch of the Government is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

## 5. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: James D. Ross, Maria J. Ross, pro sese.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

James D. Ross and Maria J. Ross have appealed the decision of the California State Office, Bureau of Land Management (BLM), dated January 18, 1982, which declared the unpatented Ribbon Rock and Agate Hill placer mining claims, CA MC 33527 and CA MC 33528, abandoned and void for failure to file on or before December 30, 1981, evidence of annual assessment work or a notice of intention to hold the claims, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Appellants state that on August 20, 1981, they mailed the original proof of labor from Houston, Texas, to San Bernardino County, California, for recordation, and copies of the proof of labor to BLM in Sacramento. The county received the original of the proof of labor on August 27, 1981, and appellants presumed that BLM had received the copies on about the same day. Appellants assert they have not abandoned the mining claims, and, indeed, have been negotiating for large scale development for commercial exploitation of the mineral deposit. Appellants state abandonment is a question of fact, and the fact is to be found in the intention of the claimants. They have never had any intention to abandon these claims, and they have done all the required assessment work annually since they acquired the claims. They were planning to file a mineral patent application for these claims in 1983. Appellants argue that BLM should have advised them that the proofs of labor had not been received, and they urge that fairness demands a favorable ruling in their favor.

[1] Under section 314(a) of FLPMA, the owner of a mining claim located on or before October 21, 1976, must file notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim in the proper BLM office on or before December 30 of every calendar year following the date of first recording a proof of labor or notice of intent to hold for the claims with BLM. This requirement is mandatory, not discretionary, and failure to comply is conclusively deemed to constitute abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980).

[2, 3, 4] The Board responded to arguments similar to those presented here in Lynn Keith, *supra*. With respect to the conclusive presumption of abandonment and appellants' argument that the intent not to abandon was manifest, we stated:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

\* \* \* Appellant also argues that the intention not to abandon these claims was apparent \* \* \*. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

53 IBLA at 196-97, 88 I.D. at 371-72.

[5] BLM was under no obligation to notify appellants of the need for a 1981 filing, nor that it had not been received. Those who deal with the Government are presumed to have knowledge of the law and the regulations duly promulgated pursuant thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510 (1976). The responsibility for complying with the recordation requirements rested with appellant.

Although appellants assert that the documents were actually mailed August 20, 1981, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if there was a delay or loss of the envelope containing the evidence of assessment work by the Postal Service, that fact would not excuse appellants' failure to comply with the cited regulations. Regina McMahon, 56 IBLA 372 (1981); Everett Yount, 46 IBLA 74 (1980). Filing is accomplished only when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f). The filing requirement is imposed by statute, and this Board has no authority to waive it. See Lynn Keith, *supra*.

Appellants may wish to consult with BLM about the possibility of relocating these claims.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques

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Administrative Judge

We concur:

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C. Randall Grant, Jr.  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge.

